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7 POLICE DEPARTMENT, CHIEF WAYNE  
TUCKER, SGT. BERNARD ORTIZ  
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10 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**  
12

13 MIGUEL ORTEGA, BENJAMIN ORTEGA,

14 Plaintiffs,

15 v.

16 CITY OF OAKLAND, OAKLAND POLICE  
DEPARTMENT, WAYNE TUCKER, In His  
17 Capacity as the Police Chief of the City of  
Oakland, RAMON J. ALCANTAR, Individually  
18 and in his capacity as a Police Officer for the  
City of Oakland, B. ORTIZ, Individually and in  
19 his capacity as a Police Officer for the City of  
Oakland, DOES 1 THROUGH 200,

20 Defendants.  
21

Case No. C-07-02659 (JCS)

**DECLARATION OF CHRIS KEE IN  
SUPPORT OF REPLY TO PLAINTIFFS'  
OPPOSITION TO DEFENDANTS'  
MOTION TO STRIKE SECOND  
AMENDED COMPLAINT NINTH  
CAUSE OF ACTION AND MOTION FOR  
SANCTIONS**

Date: September 19, 2008  
Time: 9:30 a.m.  
Dept.: Courtroom A, 15th Floor  
The Honorable Joseph C. Spero

22 I, Chris Kee, declare:

23 1. I am an attorney licensed to practice before this court and all the courts of the State  
24 of California. I am a Deputy City Attorney with the Office of the City Attorney of Oakland, one of  
25 the law and motion attorneys for defendants herein. The matters set forth in this declaration are of  
26 my own personal knowledge and if called upon I could testify to them competently.

1           2.       In August 2007, in my capacity as a law and motion attorney for defendants, I was  
2 asked to prepare a motion to dismiss the original complaint in this action pursuant to FRCP 12(b)(6)  
3 on behalf of the individual defendants. An earlier motion to dismiss had been filed on behalf of the  
4 City (one that I did not draft). My review of the pleadings suggested one ground for the motion  
5 would be that Oakland Police Chief Tucker could not be sued in his individual capacity under the  
6 facts alleged although the capacity in which he was being sued was unclear from the pleading. I  
7 didn't think it was worth a motion just to get Plaintiffs to clarify what Tucker's status was, and that  
8 it could be best dealt with by a phone call to opposing counsel.

9           3.       I subsequently found out that we had received a letter and a proposed amended  
10 complaint from Plaintiffs' counsel. I reviewed the letter and attached proposed complaint. In their  
11 letter, Plaintiffs asked that if the proposed amended complaint met the concerns defendants had  
12 raised in the prior motion to dismiss, would we take our original motion to dismiss off calendar.

13           4.       While the proposed amended pleading did seem to fix the earlier defects, my review  
14 revealed that the pleading had additional errors that had not apparently previously been discussed.  
15 On August 29, 2007, I wrote a letter to Plaintiffs' counsel, Ms. Douat, pointing out various defects  
16 in the new proposed complaint, including the problem with Chief Tucker's capacity. In the letter, I  
17 also noted that there was a flaw in the 9<sup>th</sup> cause of action. I thought the flaw as to the 9<sup>th</sup> cause of  
18 action could also be addressed since Plaintiffs were likely going to be revising the complaint  
19 anyway. Attached hereto as Exhibit A is a true and correct copy of the letter I sent to Ms. Douat on  
20 August 29, 2007. Given that Plaintiffs were proposing a new complaint, I surmised that there was  
21 no present need to file the new 12(b)(6) for the individuals.

22           5.       Ms. Douat called me immediately, claiming that we were now asking her to fix  
23 things that were not in our original 12(b)(6) motion and that she could take the default for the  
24 individual defendants. I explained that that would be a tough sell, given that they had asked us if we  
25 would allow them to file an amended complaint. As to the issue that we were highlighting errors  
26 that weren't in our first motion, I explained that, in my view, it made little sense to only fix the

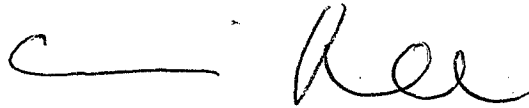
1 problems raised by our first motion, since, once she filed an amended pleading, we would file  
2 another motion to challenge the errors in the new pleading, taking us into the new year without the  
3 pleadings in repose. It simply made sense as a practical matter to fix everything at that time.

4 6. We ended the conversation agreeing that she would talk to her boss and let me know  
5 the following week.

6 7. I recall that Ms. Douat called me some time thereafter and informed me that she had  
7 spoken with her boss, and that they would be submitting a revised complaint addressing the issues I  
8 had raised.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct.

11 Executed this July day of July, 2008, at Oakland, California.

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14 CHRIS KEE  
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